IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Narmada Shankar Ameta v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.541/1998
under Article 226 of the Constitution of India.

Date of Order : 16th August, 2005

P R E S E N T
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Tribhuvan Gupta, for the petitioner.
Mr. B.l.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

The petitioner entered in services of the respondent State being appointed as Teacher Gr.III under an order dated 7.8.1958 in the pay scale of Rs.40-1-50. A promotion was accorded to the petitioner as Teacher Gr.II under an order dated 2.9.1981 passed by Inspector of Schools, Udaipur.

The Government of Rajasthan under a notification dated 25.1.1992 prescribed selection grades for government servants with a view to remove stagnation in services. Under the order dated 25.1.1992 the Government servants were declared

entitled for getting selection grades on completion of 9, 18 and 27 years of services. The petitioner being stagnating on one post for years together was allowed with two selection grades i.e. of 18 and 27 years w.e.f. 25.1.1992 with extension of benefit under Rule 26-A of the Rajasthan Service Rules, 1951. The Deputy Director, Primary and Secondary Education, Udaipur by an order dated 16.12.1996 promoted the petitioner on temporary basis subject to review and revision as Lecturer, School Education. The petitioner did not choose to accept the promotion made on temporary basis for personal reasons. The petitioner retired from services on 31.7.1997 on acquiring the age of superannuation. After retirement the respondents withdrew the selection grades allowed to the petitioner without passing any order. The pension case of the petitioner too was not finalised by the respondents.

Being aggrieved by the same the petitioner submitted number of representations to the respondents and also a notice for demand of justice but of no avail, hence the present writ petition is preferred by the petitioner contending therein that his pensionary and other retiral benefits are required to be determined on basis of pay last drawn by him by taking into consideration the selection grades allowed to him w.e.f. 25.1.1992 on completion of 18 and 27 years of services.

A reply to the writ petition has been filed on behalf of the respondents stating therein that a promotion was given to the petitioner but he refused to accept the same, therefore, in view of Government of Rajasthan's decision dated 4.12.1996 the selection grades allowed to him were withdrawn. The order dated 4.12.1996 provides that in event a government servant forgo promotion given to him then he shall not be entitled for selection grades prescribed under the notification dated 25.11.1992.

Heard counsel for the parties.

It is the position admitted that the promotion which has been forgone by the petitioner was not the regular promotion but was only a temporary promotion subject to review and revision. The notification dated 4.12.1996 pertains to actual promotion and not for adhoc or temporary promotion. If a person forgoes actual promotion then only the selection grades allowed to him can be withdrawn or denied.

In the present case the promotion forgone by the petitioner is not actual promotion but is only a temporary promotion subject to review and revision. In view of it the notification dated 4.12.1996 is having no application in the case of the petitioner. The

respondents, therefore, wrongly withdrawn the selection grades allowed to him.

In view of whatever stated above the writ petition succeeds and, therefore, is allowed. The respondents are directed to restore the selection grades allowed to the petitioner w.e.f. 25.1.1992. All retiral and pensionary benefits pertaining to the petitioner be also determined accordingly. The pension of the petitioner is required to be determined within a period of three months from today and all arrears accruing in favour of the petitioner be paid to him within a period of four months from today with interest @ 8% per annum.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.